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KD Law Alert: Kevin J. O'Donnell Prevails Before New York State Court of Appeals on an Issue of Significant Importance in Premises Liability Litigation

Kaufman Dolowich & Voluck LLP (KD) is pleased to announce that attorney **Kevin J. O'Donnell**, who has over 10 years of experience in premises liability litigation, recently prevailed on an issue of significant importance in premises liability litigation before New York State's highest appellate court – the Court of Appeals. In order to clarify the important issue in New York premises liability law of what constitutes a "trivial defect" consolidated for appeal three cases in which summary judgment had been granted to defendants on the grounds that the defect causing the plaintiffs' accidents and injuries constituted non-actionable "trivial defects." Of the three cases, the only case affirmed on appeal was that defended by Kevin O'Donnell. The Court's decision highlighted the record established at the trial stage by Mr. O'Donnell proving the defect was, in fact, trivial and not actionable under New York law.

In April 2009 plaintiff Leonard Hutchinson allegedly tripped and fell over a cylindrical metal object, which he said looked as though it had been "screwed on in the concrete" in the sidewalk adjacent to 1413 Sheridan Avenue, Bronx, New York. Pursuant to Section 7-210 of the New York City Administrative Code, the owner of the building, Sheridan Hill House Corp. ("Sheridan"), a not-for-profit corporation, which provides housing and social services to the disabled, was responsible for maintaining the sidewalk in reasonably good condition. The Supreme Court Bronx County granted Sheridan's motion for summary judgment, which the Appellate Division, First Department affirmed in a 3-2 split decision. The Appellate Division held that Sheridan established both that it lacked actual or constructive notice of the defect, and further that color photographs submitted in support of its motion showing that the object projected just 3/16 inch above the surface of the sidewalk and measured 5/8 inch in diameter established as a matter of law that the alleged defect constituted a non-actionable "trivial defect".

Under the "double dissent" rule, plaintiff appealed as of right to the New York State Court of Appeals. Following oral argument, the Court of Appeals held that Sheridan was the only one of the three defendants that met its prima facie burden of establishing the defect's trivial nature as a matter of law.

The Decision in Hutchinson v. Sheridan Hill House Corp., __ N.Y.3d ___ (2015), provides much needed amplification to the Court's earlier holding in Trincere v. Cty.of Suffolk, 90 N.Y.2d 976, 977 (1997). Specifically, the Court explains that "the trivial defect doctrine is best understood with our well-established summary judgment standard in mind… A defendant seeking dismissal of a complaint on the basis that the alleged defect is trivial must make out a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risk it poses. Only then does the burden shift to the plaintiff to establish an issue of fact."

Having found Sheridan met its prima facie burden by virtue of the color photographs showing ruler measurements of the object, the Court rejected plaintiff's contention that the characteristics of the defect, particularly its abrupt edge in an otherwise pristine sidewalk, magnified the hazard it presented. Specifically, the Court held that that the question "is not whether the defect is capable of catching a pedestrian's shoe. Instead, the relevant questions are whether the defect was difficult for a pedestrian to see or to identify as a hazard or difficult to pass over safely on foot in light of the surrounding circumstances." Applying these factors to the instant case, the Court held Sheridan met its burden, which plaintiff failed to overcome. Conversely, the Court, for different reasons, held that the evidence submitted by defendants in the other two consolidated appeals failed to satisfy the "trivial defect" test as a matter of law.

Gino Zonghetti, co-managing partner of KD's New Jersey Office who works closely with Mr. O'Donnell in KD's maritime and general liability practice groups, said "This decision will likely stand as New York State's seminal and most authoritative statement of the trivial defect doctrine for decades to come."

KD attorneys have defended, including at trial, many premises liability cases brought by plaintiffs in numerous jurisdictions. The firm defends personal injury as well as property damage claims arising out of accidents and casualties occurring on commercial premises. The firm is regularly called upon to handle difficult cases involving serious injuries as well as to manage the insurance coverage issues associated with the cases. This Decision is an affirmation of KD's comprehensive, hands-on approach to defending these claims from inception to conclusion.

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